

RICHARD MARTIN GIVAN

Justice 1968 – 1994

Chief Justice 1974 – 1987

Jerome L. Withered\*

He flew airplanes and was a flight instructor, rode motorcycles, raised and trained Arabian show horses, was a photographer at the Indianapolis 500, served in the Indiana legislature, and was a successful lawyer. And then he became the first permanent Indiana Chief Justice. That was Dick Givan.

Born June 7, 1921, Richard Martin Givan was a fourth-generation Hoosier lawyer, his great-grandfather having started the family legal tradition in Dearborn County around the turn of the 20<sup>th</sup> century. Givan grew up in the Indianapolis area where his father practiced law. Following high school, he was a pilot in the U.S. Army Air Corps during World War II. After the war, he attended Indiana University and then law school at the Indiana University School of Law – Indianapolis. During law school, he had the distinction of being appointed as the first law clerk for the Indiana Supreme Court, serving all five Judges.

After law school and admission to the bar in 1951, the Court appointed Givan as Deputy State Public Defender. He later served as a deputy attorney general and as the Assistant Attorney General of Indiana. In this capacity, he argued the case of *Irvin v. Dowd*,<sup>1</sup> a seminal death penalty case, before the U.S. Supreme Court, involving constitutional questions of whether adverse pre-trial publicity and pre-determined opinions of guilt by most prospective jurors deprived the defendant of a fair trial. Following the Court's decision reversing the conviction, Givan teamed with the local prosecuting attorney to re-try and convict Irvin. In 1959, he became a partner in the law firm of Bowen, Myers, Northam and Givan, and maintained a private law

practice until he assumed the bench in 1968. He also served as a Marion County deputy prosecutor.

One of his most important cases as a private practitioner was the Indianapolis MTA case,<sup>2</sup> in which he, along with a team of one other Republican and two Democratic lawyers, challenged the pocket veto by Governor Roger Branigin of a bill that funded the Indianapolis Mass Transit Authority through 90% of inheritance tax collections. The Indiana Constitution specifically provides procedures for the Governor to sign and veto legislative enactments. By neither signing nor vetoing the MTA bill, Governor Branigin had attempted a pocket veto of the bill, which arguably was not permitted by the Constitution. The result of the court challenge led by Givan was a ruling that the Indiana Constitution did not allow the governor the option of a pocket veto, and since the governor had not properly vetoed the bill, it became law. Hence, the MTA was entitled to 90% of inheritance tax collections.

After being elected to the legislature in 1966 and serving one term, Givan in 1968 sought and obtained the Republican nomination for Supreme Court Judge, and was elected in the fall. He entered the race only after the candidate he had pledged to support died of a heart attack before the Republican State Convention.<sup>3</sup>

As a judge, Givan was plain-spoken, straightforward, and frugal in his use of words. His reasoning was that lawyers don't have the time, and clients don't have the money to pay lawyers to take the time, to read through a judge's long-winded philosophizing on the law. State the law, state the facts, apply the law to the facts, and finish – that was his view of how an appellate opinion should be written. He also disliked and avoided footnotes, using only 14 of them in 1,571 opinions during his 26 years on the bench.<sup>4</sup> His rationale: if the comment is not important enough to be in the body of the opinion, then it shouldn't be there at all.

When the Indiana Constitution was revised to take judges off the partisan ballot and elect a permanent Chief Justice for a 5-year term (instead of a one-year rotating term), Givan --- who had a long history of trying cases and arguing before Indiana courts and who had personally known every Indiana Supreme Court Justice since the 1940s --- was the obvious choice. First elected by the Judicial Nominating Commission as Chief in 1974, he was re-elected in 1979. When his second term was about to expire, he expressed a desire to have another member of the Court take over the reins. He was a strong believer in term limits, holding the view that turnover, new blood, and fresh ideas were important in any endeavor, and especially so in government and the judiciary. But the Commission prevailed on him to stay on for another term. He remained Chief Justice another 2 1/2 years, until 1987, when he retired from the post.

As Chief Justice, Givan led the fight to upgrade bar admissions standards by requiring certain core legal classes in law school, and he significantly enhanced the Division of State Court Administration. He also worked tirelessly on behalf of the Indiana judiciary, vastly improving, among other things, the Indiana Judicial Center and its assistance and research programs for trial judges.

But the most endearing, and enduring, trait of Richard Givan was his sense of the common person. He could relate to a factory worker or a corporate executive just the same. And in the eyes of the law, they were the same. He likened his role as a judge to that of a baseball umpire: call the balls and strikes as you see them, without regard to who the pitcher, batter, team or team owner is.

All who knew Richard Givan knew that he was the most down-to-earth, unpretentious judge they ever met. He introduced himself to everyone as “Dick Givan.” Even as Chief Justice, when calling on the telephone, he would tell the receptionist, who oftentimes had no idea who he

was, that it was Dick Givan calling for the individual. He was also, without a doubt, the best legal storyteller of his generation. Having known many lawyers and judges around the state, and having tried cases in all corners of the state, his vast knowledge of the Indiana judiciary was legendary, as was his ability to tell the stories of lawyers, and judges, and legal cases.

Justice Givan retired from the Supreme Court in 1994, but remained active in legal and judicial affairs until in his 80s. His wife of 62 years, Pauline, preceded him in death in 2008, and Justice Givan died on July 21, 2009. The family legal tradition is now carried on by his daughter Libby Givan Whipple, a former Indiana Deputy Attorney General, and by his grandson, Jonathan Chenoweth, currently a State Deputy Public Defender.

\* Member of the Bar of Indiana. The author served as law clerk to Chief Justice Givan from 1977 to 1979.

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<sup>1</sup> 366 U.S. 717 (1961).

<sup>2</sup> *State ex rel. Mass Transp. Authority of Greater Indianapolis v. Indiana Revenue Board*, 144 Ind.App. 63, 242 N.E.2d 642 (Ind.Ct.App. 1968), transfer denied, 251 Ind. 607, 244 N.E.2d 111 (Ind. 1969).

<sup>3</sup> Greg Kueterman, "Justice Givan nearing end of brilliant legal journey," The Indiana Lawyer, July 13, 1994, p. 6.

<sup>4</sup> Michael W. Hoskins, "Favoring or frowning on judicial footnotes," The Indiana Lawyer, August 6, 2008, p. 10.

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